
ARBITRATION OPINION AND AWARD

IN THE MATTER OF THE ARBITRATION BETWEEN

LEVECKE CORPORATION

AND

TEAMSTERS LOCAL UNION NO. 630

Grievant: Marisela Sepulveda
Suspension

Hearing Held: October 18, 2001

C. Chester Brisco, Arbitrator

APPEARANCES

FOR THE EMPLOYER: Herbert A. Moss, Esq.
FOR THE UNION: Paul Crost, Esq.

BACKGROUND

The Company's business is packaging alcoholic beverages. The filled, labeled, and capped bottles are carried on conveyor lines where they are inspected and packed into cartons. On the morning of February 8, 2001, the Grievant, Marisela Sepulveda, was working on line B with Doreen Ekstrom. They are classified as Inspector/Packers. The product that morning was a particular brandy under the label of one of the Company's most important customers. As the bottles traveled along the conveyor belt, they arrived first at Ekstrom's station and then, approximately three feet further along, at Sepulveda's station. Ekstrom's job was to inspect the bottles, place four of them in the case to which she affixed certain labels. Sepulveda then inspected and placed eight bottles in the box, filling it ready for sealing and off-loading at the end of the line, about ten feet away. Bottles were inspected for proper placement of the medallion (located in a depression just below the neck of the bottle), for correct placement of the front and back labels on the body of the bottle, and for appearance of the cork and of the sleeve which covers the bottle's neck. The Grievant's sister, Norma Aguilar, also an Inspector/Packer, worked on the adjacent line C.

The incident that resulted in the Grievant's three-day suspension occurred at about 8:00 a.m. The facts are sharply disputed.

Production Manager Brian Lafranchini testified that when he came into the area where the two women were working, Sepulveda called him over to "inspect a case that had a bad bottle at the end of the line. She had let a bad bottle go by to show what kind of work Doreen does." In a further exchange, Lafranchini said that he concluded that Sepulveda had deliberately "sabotaged" the line. (He made a contemporaneous note in his journal, using that word.) He could not find a bad bottle in the case that Sepulveda had pointed out.

At about this juncture, Vice President of Operations Ray Steelman arrived upon the scene. He asked, he testified, "What was going on?" Lafranchini told him they were looking for a bad bottle that Sepulveda had let go by to prove that Ekstrom was not doing her job. Steelman responded that "We should not be doing this. We are behind." Steelman concluded that the bottle needed to be located and it was decided to inspect all of the cases packed that morning on line B. (It is disputed whether there were eight or nine such pallets of cases, or only four or five. There are 50 cases to a pallet, 12 bottles per case.)

The bad bottle could not be located. Later, because of a mix-up, these pallets, originally tagged for "hold," had their tags removed, and were moved to the warehouse, intermingled with about 1,800 cases identified by date that they had been packed on February 8, 2001. Ultimately, all 1,800 had to be inspected in an effort to find the bad bottle. Two bottles were found to have marginal, but acceptable, labels, and one was found with a crooked label. (In shop language, bottles with crooked labels are called "spotted," because the label has not been placed in the correct spot.) From the date stamped upon the case in which the bad bottle was found, it was determined that it had been packed on February 8, 2001. However, the time stamp on the bottle was unreadable and the Company was unable to conclude it was the bottle for which they had searched. Both Sepulveda and Aguilar testified that the bottle's imperfections did not match those of the bad bottle in question.

Based upon what he had learned on the morning of February 8th, Lafranchini concluded the case against Sepulveda was "cut and dried" when she told him that she deliberately "let a bottle go through to show that Ekstrom was not doing her job correctly." Further, according to Lafranchini, Sepulveda had told him that she would not be responsible for the production line, even though we were having lots of problems that morning. This attitude, Lafranchini said, was

contrary to his instructions that the senior employee, who was Sepulveda, must help out and teach the less senior employee, Ekstrom. Lafranchini responded to Sepulveda that “She was the senior packer and it was her responsibility to oversee. . . . If she didn’t like her job as senior packer she could clock out and go home, but that was her job as senior packer.”

After Lafranchini consulted with Vice President Operations, Ray Steelman, and with Human Resources, it was decided to discipline Sepulveda with a three-day suspension. The notice of suspension, dated February 8, 2001, and presented to Sepulveda on February 20, 2001, described the reasons for the discipline as follows:

On 2-8-01 you made the decision to make “an example” of a co-worker by “planting” a grossly defective bottle in a case that was packed in your production area. To compound the problem you instigated the assistance of your coworkers in your deception. Unfortunately, your sabotaged box did not get “put aside” to be shown as a spectacle as you intended. It was instead put in with the rest of the regular production. Since your deception was caught, the Company had to put a hold on the entire production, to that point, to be later opened and examined to make sure the “marked” bottle does not end up at a customer. This will take considerable time, effort and expense to correct.

You work for this Company as a team member. You have been with us long enough to know what your job responsibilities are. They do not include pulling “pranks” on your co-workers and costing the Company time and money to correct your recklessness. This is a reasonable offence to warrant termination and even possible restitution. A decision will be made by upper management.

When he delivered this notice to Sepulveda, Lafranchini wrote at the bottom, in her presence, “Employee will be suspended without pay for 3 days Feb 21-22, & 26. To return Feb 27, 2001.” This arbitration resulted.

ISSUES

1. Did the Employer violate the Collective Bargaining Agreement by its three-day suspension of Marisela Sepulveda?
2. If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

ARTICLE III – PLANT MANAGEMENT, DIRECTION OF PERSONNEL AND GRIEVANCES

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B. The Employer shall have the right to discharge any employee for good cause Such [sic] as but not limited thereto, dishonesty, incompetency, drinking alcoholic beverages during working hours, chronic absenteeism and tardiness, failure to perform work as normally required.

ARTICLE XXII – ARBITRATION

Any grievance, dispute or question regarding wages, hours and other conditions of employment, or the application or interpretation of any provision of this Agreement shall be adjusted according to the following procedure

POSITIONS OF THE PARTIES

Position of the Company

Firstly, the Company points out that there is no contract provision limiting the broad right of management to impose less than discharge discipline. Article III of the Collective Bargaining Agreement requires “just cause” only for discharges. Secondly, the grievance filed by the Union does not mention the word “suspension”, nor any contract provision claimed to be violated. Thus, the Company has not violated any provision of the Agreement because the Union has not claimed any such violation. The Grievance, therefore, should be dismissed upon these grounds. Finally, assuming that there is a proper grievance, the decision to discipline should be sustained because the Grievant deliberately allowed a bad bottle to go by. Two witnesses confirmed that she said this at two different times. With this overwhelming evidence, there was little to investigate. This was a deliberate act to disrupt production. If this act had been a simple mistake, the Company concluded, no discipline would have been imposed.

Position of the Union

The Union points out that the grievance provisions of the Collective Bargaining Agreement do not require that a written grievance refer to a specific contract provision. Under the Agreement, the Company has an implied obligation to act reasonably in imposing discipline; that is, there must be just cause. The Union further argues that the Company has not established just cause for suspending the Grievant. The Company, claims the Union, failed to conduct sufficient investigation to determine what really happened, and bases its case entirely on Lafranchini’s testimony as to what Sepulveda said to him.

The facts are, according to the Union, that the line was a mess that morning, with bottles that had been taken from the line placed on the table, on the floor, everywhere. Earlier in the morning, Sepulveda had seen Ekstrom packing bottles that she should not have, removed them, and told her to be more careful. Bad bottles continued to accumulate. Lafranchini saw that the line was not functioning properly and either on his motion or at the request of Sepulveda, he came over and asked Sepulveda what was the problem. Sepulveda responded that everything was a mess and that Ekstrom had packed bad bottles.

Prior to this conversation, there may have been a bad bottle that Ekstrom had packed that Sepulveda had not caught. During a break, while the carton was not yet sealed, Aguilar came over from line C and checked the boxes that were still on the line, found three bottles that were bad, and removed them from the carton. One of these may have been the one that Sepulveda had not caught, but this is unknown. Now, Sepulveda, unaware that Aguilar had removed the bad bottle, directs Lafranchini to the box she believed contained the bad bottle, but it cannot be found because Aguilar had already removed it.

Sepulveda made two statements: there are a lot of problems and there is a case that may have a bad bottle. The circumstances corroborate the Grievant's story, and make it highly improbable that Sepulveda deliberately sabotaged the line. Lafranchini and Steelman simply misunderstood what Sepulveda said. The Union concludes that the suspension should be removed, the Grievant should be made whole, and her disciplinary record should be expunged.

OPINION

It is well established in arbitration that where the Collective Bargaining Agreement is silent or when it contains only general language, "there is a presumption that managerial discretion must be exercised reasonably and with a degree of prudence befitting the circumstances." Management's exercise of discretion may be reviewed by the arbitrator "to determine whether it has been *arbitrary, capricious, or discriminatory*."¹ To reason otherwise leads to the conclusion that the Company may impose less than discharge discipline arbitrarily, capriciously, or discriminatorily. Certainly, the Company would not claim as much. The essence of the concept of just cause is that management has not acted in an arbitrary, capricious, or discriminatory manner.

¹ Prasow and Peters, *Arbitration and Collective Bargaining*, 282 (2nd ed. 1983).

The Company's argument that the requirement of just cause is limited to discharge decisions, therefore, is not well taken. The Grievance document makes plain that Sepulveda was protesting her suspension, and that she requested restoration of her pay as the remedy. There is no contractual requirement that a Grievance refer to a specific provision of the Collective Bargaining Agreement.

The Union points out that the Company has the burden of proving by the weight of the evidence the facts which support its reasonable exercise of discretion. The arbitrator has carefully reviewed the conflicting testimony in the light of this standard of proof. The weight of the evidence establishes the following facts.

On the morning of February 8, 2001, Ekstrom and Sepulveda were working on line B. The bottles arrived at Ekstrom's position first and then, about three feet further on, they passed to Sepulveda's position. There is a long mirror directly in front of the Inspector/Packers to aid viewing the rear label on the bottles. Sepulveda could see in the mirror the condition of the bottles Ekstrom packed. Aguilar was working in front of them on the adjacent conveyor line C, facing away, but she could see in her mirror activity on line B.

Their shift started at 6:00 a.m. At about 7:00 a.m. Sepulveda had removed a spotted bottle that Ekstrom had packed, and she instructed Ekstrom, who was less experienced, about letting bad bottles go by. Both Ekstrom and Sepulveda testified that they always had problems running this particular product, the line was not operating properly, and they had removed so many bad bottles that there was hardly room for more on the floor. Sepulveda further testified that at about 8:00 a.m., she saw a spotted (crooked label) bottle put into a case by Ekstrom, but she did not get a chance to put it aside. The line had stopped, and Albert Torres was pushing cases from the line into the taper, about eight feet away. Sepulveda looked for more room to place more bad bottles and "when I turned around, I noticed the case was gone and I told Albert Torres to get the case, which had gone through the taping machine, and put it on the floor."

After Sepulveda had spotted the bad bottle packed by Ekstrom, Aguilar came over to line B and asked Sepulveda what was the matter. Sepulveda said "everything was wrong with the bottles." She explained that "the bottles were spotted, the medallions were crooked, the caps were cracked, and Doreen was packing things she wasn't supposed to." Aguilar's testimony confirmed that while her line was stopped for a label change, she stepped over to line B on her own initiative and checked four cases that were on the line B conveyor. She found one bottle that

was spotted that she placed on a table and two bottles with broken caps from which she removed the sleeves and placed them on the tray to be recycled. Her line B started and Aguilar returned to work. Sepulveda did not see Aguilar remove any bottle from the case because Sepulveda was busy removing bad bottles from the line, which had not yet started.

At this point, Lafranchini came up and asked Sepulveda "What's the problem?" Sepulveda repeated what she had told Aguilar about the conditions of the bottles, that Doreen was packing things she was not supposed to, and that there was a case on the floor that still had to be checked. Sepulveda testified that she did not tell Lafranchini that she had let a bottle go by to prove that Ekstrom was packing things incorrectly. Sepulveda believed that the case Torres had removed and placed on the floor contained the bad bottle and she pointed it out to Lafranchini. He opened the case, which had already been sealed, and checked the bottles. He told Sepulveda all the bottles were good. Sepulveda then yelled above the line noise to Aguilar, who had been helping her, and asked if she had checked the cases that were on the line, and she said "Yes." Aguilar came over and tried to explain and, according to Sepulveda, Lafranchini did not want to listen to her and told her she had no business there and she had to leave.

Lafranchini then told Sepulveda that she had more seniority than Ekstrom, that she was responsible, and that if she couldn't be responsible, then she could clock out and go home. This upset Sepulveda, who felt that just because she had more seniority that she was not responsible for "doing someone else's job." While line B was still stopped, Steelman arrived and asked what was wrong. Sepulveda told him "everything was wrong" and that she "could not keep an eye on everything. . . . It was just too hard, the way the line was running." She testified that she did not tell him that she had let a bottle go by to prove that Doreen was not doing her job. Sepulveda also testified that there were only four or five pallets that Lafranchini put on hold, not eight or nine, and that this was because there were so many bad bottles that morning that nine pallets could not have been processed.

CONCLUSIONS

The testimony of Lafranchini and Sepulveda is in direct conflict. The arbitrator credits the testimony of Sepulveda. Her testimony is rich in detail that would be difficult to invent; it has the ring of truth. She told neither Lafranchini nor Steelman that she had deliberately let a bad bottle go by to prove that Ekstrom was not doing her job, nor did she use words to that effect. In the confusion and noise, Lafranchini simply misunderstood what Sepulveda said, and he chose

not to question Aguilar or Ekstrom in an effort to confirm what he believed he had heard. It does not make sense, as the Union argues, that Sepulveda would have volunteered that she had deliberately let a bad bottle go by to “sabotage” the line, as Lafranchini chose to describe it. The statement in the notice of suspension that she attempted to “make an example of a co-worker by planting a grossly defective bottle in a case” is not supported by any evidence. Nor is there any evidence to support the conclusion that Sepulveda “instigated the assistance of a co-worker.”

It is true that the Company felt obliged to search about 1,800 cases in an effort to find the bad bottle. But that was not the fault of Sepulveda. The few pallets of cases that had been packed between 6:00 a.m. and 8:00 a.m. that morning were promptly inspected for bad medallions, but they were not inspected for spotting. At the end of the day, it was discovered that, contrary to instructions, these cases did not have “hold tags” on them. By that time, they had already been transported to the warehouse with the result that the cases were indistinguishable from the other cases packed that day, and the Company concluded it must search the entire day’s production for spotting.

The weight of the evidence is that a bad bottle did go by Sepulveda’s station because she did not have time to remove it from the case, but she believed she identified to Lafranchini the case which contained it. Unknown to her, Aguilar had removed the bad bottle. Lafranchini refused to accept Aguilar’s attempt to explain because his mind was already made up. His failure to investigate further deprived him of the opportunity to learn the facts.

AWARD

1. The Grievance is sustained. The Employer violated the Collective Bargaining Agreement by its three-day suspension of Marisela Sepulveda.
2. The remedy shall be that Marisela Sepulveda shall be made whole for loss of pay by reason of the suspension and that the record of this discipline shall be expunged from her file. The arbitrator retains jurisdiction solely for the purpose of administering the terms of this award.

October 29, 2001
Tustin, California

C. Chester Brisco, Arbitrator